No. 15683

United States Court of Appeals

For the Ninth Circuit

W. S. Pekovich and Admiralty Alaska Gold Mining Company, a Corporation, *Appellants,*

vs.

Minnie Coughlin, as Executrix of the Estate of Robert E. Coughlin, deceased, *Appellee.*

Appeal from the District Court for the Territory of Alaska, Division Number One

PETITION FOR REHEARING (OR RECONSIDERATION)

Fred J. Wettrick,
805 Arctic Building,
Seattle 4, Washington,

Joseph A. McLean,
P.O. Box 1193,
Juneau, Alaska,
Attorneys for Appellants.

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Appellant petitioner respectfully petitions the Court for reconsideration of the decision rendered and entered herein on the 9th July, 1958, on the ground that the decision is not supported by the evidence and the Court's conclusion is in error.

The petition is based upon the following considerations:

(1) The language of appellant's letter (Tr. 27) Coughlin's contract of employment, states specifically and clearly that for the work of bookkeeper appellant "will give you in compensation *therefor* 4000 shares of stock . . . " The word "therefor" can have no other meaning that *for the work* he is to perform, he will be given the stock; not in lieu of money, not a bonus, but *therefor, i.e.,* in payment for the work as bookkeeper, the same as his predecessor received in cash. The value

of the stock (4,000 shares) was approximately equal to a salary of $75.00 per month at that time. Nowhere is there any cogent testimony that the stock was in addition to the salary of $75.00 per month.

(2) The foregoing interpretation is supported by the following:

(a) Coughlin never said a word to appellant that he expected to receive the stock, not even to his friend and predecessor Ehreindrich.

(b) $75.00 per month or its equivalent in stock was the going salary for that position.

(c) Coughlin paid himself that salary when the funds became available, preferring the cash urgently needed for his family, as shown by the testimony of Mrs. Coughlin (Tr. 137) that they had no principal income for two years. "We spent mostly that we had gotten from the sale of the Peterson Refuge Company and that is what we were living on." Therefore, Coughlin took the cash.

(d) After the year was up, he continued to pay himself $75.00 per month.

(e) The trial court interpreted the contract letter correctly when the trial judge stated: "Now, certainly he can't get both the stock and the money." (Tr. 45-6)

(f) Appellee, Minnie Coughlin, in submitting to the appraisers the inventory of her husband's estate, August 2nd, 1956 (Tr. 107-11) stated *under oath* in effect that the only stock belonging to the estate was 1,000 shares and made no mention of any 4,000 shares as belonging to the deceased.

(g) Appellant did not "tell Coughlin or anyone else that he (Pekovich) would not deliver the

stock" (Court's Opinion, p. 2) for the obvious reason that when Coughlin paid himself (he wrote the checks for the Company) his salary in cash for his work, he was fully compensated *"therefor."*
(h) The stock was not offered "as an added incentive" but in compensation *therefor* as stated clearly and unequivocably in the contract of employment.

(i) The letter or contract is not ambiguous if the word *"therefor"* is given its proper definition; it means in payment *for* the services.

(j) Coughlin had been employed before at $75.00 per month and accepted the same salary during the tenure of employment in question until his death in September, 1955.

(k) Henry Roden was *President* of the Mining Co., and also a Court appointed appraiser of the Coughlin estate. He verified the inventory of the estate (Ex. E) as covering only 1,000 shares of stock, not 5,000 shares, showing that both Roden, the President of the Company, and the appellee, Executrix of the Coughlin estate, did not consider Coughlin was the potential owner of the 4,000.

(l) Availability of cash funds being doubtful as Coughlin well knew Pekovich agreed "I will give you in compensation *therefor,"* for your services, said shares of stock.

(m) At the second meeting of stockholders (February 7th, 1955) (Tr. 92) one year after Coughlin's employment, at which Coughlin was present, nothing was said by Coughlin about a claim to 4,000 shares of stock, because he had received his salary in cash.

(n) Coughlin worked from February 1st, 1954, to September, 1955, drew his salary in cash and never

once mentioned to Pekovich or the officers of the Company he had 4,000 shares due him.

(o) Letter to Mr. Roden, President of the Mining Co. (Tr. 70) shows plainly that the stocks had been promised in consideration of the work to be performed, "I will give you in compensation *therefor* . . . "

(p) Mrs. Coughlin testified she discussed many times with her husband about the stock (Tr. 129), yet neither she nor Coughlin ever requested of Pekovich delivery of, or even mentioned, the stock, for the obvious reason that Coughlin did not consider the stock due him. The alleged conversation either did not occur, or Coughlin dismissed it from his mind for the reason stated.

We submit that an objective consideration and analysis of the foregoing unmistakably points to the conclusion that the stock in question was promised for the work to be performed, as the word "therefor" indicates, and in lieu of cash payment, which was not then available or in immediate prospect, and that when Coughlin later received compensation *"therefor"* in cash he was fully paid. He never expected to be paid twice for the work. Any other interpretation does violence to the language of the contract and totally ignores the use and meaning of the word *"therefor."*

Wherefore, petitioner very respectfully prays that this Court reconsider its decision or grant the privilege of rehearing.

Respectfully submitted,

FRED J. WETTRICK
JOSEPH A. MCLEAN
Attorneys for Appellants.

CERTIFICATE

The undersigned counsel for appellant states that in his judgment the above petition for rehearing is well founded and is not interposed for delay.

FRED J. WETTRICK
of Counsel for Appellant.